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9
10 **BEFORE THE**
11 **BOARD OF REGISTERED NURSING**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
13 **STATE OF CALIFORNIA**

14 In the Matter of the Accusation Against:

Case No. 2009-299

15 **JOSHUA STEPHEN YARBROUGH**

Post Office Box 2122

16 Valley Center, California 92082

A C C U S A T I O N

17 Registered Nurse License No. RN 582542

18 Respondent.

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20 Ruth Ann Terry, M.P.H., R.N. ("Complainant") alleges:

21 **PARTIES**

22 1. Complainant brings this Accusation solely in her official capacity as the
23 Executive Officer of the Board of Registered Nursing ("Board"), Department of Consumer
24 Affairs.

25 2. On or about June 27, 2001, the Board issued Registered Nurse License No.
26 RN 582542 ("license") to Joshua Stephen Yarbrough ("Respondent"). The license was in full
27 force and effect at all times relevant to the charges brought herein, and it will expire on
28 February 28, 2011, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing, Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code ("Code") unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 of the Nursing Practice Act.

5. Code section 2761 states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

- (a) Unprofessional conduct, . . .
- (f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

6. Code section 2762 states, in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

.....

- (b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

- (c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof.

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1 7. Section 482 of the Code states:

2 Each board under the provisions of this code shall develop criteria to
3 evaluate the rehabilitation of a person when:

4 (b) Considering suspension or revocation of a license under Section 490.

5 Each board shall take into account all competent evidence of rehabilitation
6 furnished by the applicant or licensee.

7 8. Section 490 of the Code states:

8 (a) In addition to any other action that a board is permitted to take against
9 a licensee, a board may suspend or revoke a license on the ground that the licensee
10 has been convicted of a crime, if the crime is substantially related to the
 qualifications, functions, or duties of the business or profession for which the
 license was issued.

11 (b) Notwithstanding any other provision of law, a board may exercise any
12 authority to discipline a licensee for conviction of a crime that is independent of
13 the authority granted under subdivision (a) only if the crime is substantially related
 to the qualifications, functions, or duties of the business or profession for which
 the licensee's license was issued.

14 (c) A conviction within the meaning of this section means a plea or verdict
15 of guilty or a conviction following a plea of nolo contendere. Any action that a
16 board is permitted to take following the establishment of a conviction may be
17 taken when the time for appeal has elapsed, or the judgment of conviction has been
 affirmed on appeal, or when an order granting probation is made suspending the
 imposition of sentence, irrespective of a subsequent order under the provisions of
 Section 1203.4 of the Penal Code.

18 (d) The Legislature hereby finds and declares that the application of this
19 section has been made unclear by the holding in Petropoulos v. Department of
20 Real Estate (2006) 142 Cal.App.4th 554, and that the holding in that case has
21 placed a significant number of statutes and regulations in question, resulting in
22 potential harm to the consumers of California from licensees who have been
23 convicted of crimes. Therefore, the Legislature finds and declares that this section
 establishes an independent basis for a board to impose discipline upon a licensee,
 and that the amendments to this section made by Senate Bill 797 of the 2007-08
 Regular Session do not constitute a change to, but rather are declaratory of,
 existing law.

24 9. Section 493 of the Code states:

25 Notwithstanding any other provision of law, in a proceeding conducted by
26 a board within the department pursuant to law to deny an application for a license
27 or to suspend or revoke a license or otherwise take disciplinary action against a
28 person who holds a license, upon the ground that the applicant or the licensee has
 been convicted of a crime substantially related to the qualifications, functions, and
 duties of the licensee in question, the record of conviction of the crime shall be
 conclusive evidence of the fact that the conviction occurred, but only of that fact,

1 and the board may inquire into the circumstances surrounding the commission of
2 the crime in order to fix the degree of discipline or to determine if the conviction is
3 substantially related to the qualifications, functions, and duties of the licensee in
4 question.

5 As used in this section, "license" includes "certificate," "permit,"
6 "authority," and "registration."

7 10. California Code of Regulations, title 16, section 1444, states:

8 A conviction or act shall be considered to be substantially related to the
9 qualifications, functions or duties of a registered nurse if to a substantial degree it
10 evidences the present or potential unfitness of a registered nurse to practice in a
11 manner consistent with the public health, safety, or welfare. Such convictions or
12 acts shall include but not be limited to the following:

13 (a) Assaultive or abusive conduct including, but not limited to, those
14 violations listed in subdivision (d) of Penal Code Section 11160.

15 (b) Failure to comply with any mandatory reporting requirements.

16 (c) Theft, dishonesty, fraud, or deceit.

17 (d) Any conviction or act subject to an order of registration pursuant to
18 Section 290 of the Penal Code.

19 11. California Code of Regulations, title 16, section 1445, states:

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21 (b) When considering the suspension or revocation of a license on the
22 grounds that a registered nurse has been convicted of a crime, the board, in
23 evaluating the rehabilitation of such person and his/her eligibility for a license will
24 consider the following criteria:

25 (1) Nature and severity of the act(s) or offense(s).

26 (2) Total criminal record.

27 (3) The time that has elapsed since commission of the act(s) or offense(s).

28 (4) Whether the licensee has complied with any terms of parole, probation,
restitution or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section
1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

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1 **COST RECOVERY**

2 12. Code section 125.3 provides, in pertinent part, that the Board may request
3 the administrative law judge to direct a licensee found to have committed a violation or
4 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
5 and enforcement of the case.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(July 19, 2007 Criminal Conviction– DUI on February 8, 2007)**

8 13. Respondent is subject to disciplinary action under Code sections 490 and
9 2761, subdivision (f), for a criminal conviction that is substantially related to his qualifications,
10 functions, and duties as a registered nurse. The circumstances are as follows:

11 a. On or about February 8, 2007, Respondent did unlawfully, while under the
12 influence of an alcoholic beverage and/or drug, drive a vehicle in violation of Vehicle Code
13 section 23152, subdivision (a).

14 b. On or about July 19, 2007, in the Superior Court of California, County of
15 Kings, Hanford Division, in the case entitled *People of the State of California v. Joshua Stephen*
16 *Yarbrough*, Case No. 07CM1329, following a court trial, Respondent was found guilty of
17 violating Vehicle Code section 23152, subdivision (a) [driving under the influence], a
18 misdemeanor.

19 c. On or about that same date, Respondent was sentenced as follows:
20 conditional release without probation department supervision for a period of three years.
21 Respondent was also ordered to serve five days county jail, enroll in and successfully complete a
22 DUI program (1st Offender) of three months duration, and pay fines and fees.

23 **SECOND CAUSE FOR DISCIPLINE**

24 **(May 12, 2008 Criminal Conviction– DUI on December 18, 2007)**

25 14. Respondent is subject to disciplinary action under Code sections 490 and
26 2761, subdivision (f), for a criminal conviction that is substantially related to his qualifications,
27 functions, and duties as a registered nurse. The circumstances are as follows:

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1 a. On or about December 18, 2007, Respondent did unlawfully, while having
2 .08% and more, by weight, of alcohol in his blood, drive a vehicle in violation of Vehicle Code
3 section 23152, subdivision (b).

4 b. On or about May 12, 2008, in the Superior Court of California, County of
5 San Diego, North County Division, in the case entitled *People of the State of California v.*
6 *Joshua Stephen Yarbrough*, Case No. CN240015, Respondent was convicted by his plea of guilty
7 of violating Vehicle Code section 23152, subdivision (b) [driving while having a measurable blood
8 alcohol level], a misdemeanor, with a special allegation that, within 10 years, Respondent was
9 previously convicted of violating Vehicle Code section 23152 within the meaning of Vehicle Code
10 sections 23626 and 23540 (see First Cause for Discipline above).

11 c. On or about that same date, Respondent was sentenced as follows:
12 imposition of sentence suspended for five years and Respondent placed on summary probation.
13 Respondent was also ordered to serve 75 days county jail, enroll in and successfully complete a
14 DUI program (Multiple Conviction Program), and pay fines and fees.

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(Unprofessional Conduct– Criminal Convictions**
17 **Involving Consumption of Alcohol and/or Drugs)**

18 15. Respondent is subject to disciplinary action under Code section 2761,
19 subdivision (a), on the grounds of unprofessional conduct, as defined in Code section 2762,
20 subdivision (c), in that Respondent was convicted of crimes involving the consumption of
21 alcoholic beverages and/or drugs, as set forth in paragraphs 13 and 14 above.

22 **FOURTH CAUSE FOR DISCIPLINE**

23 **(Unprofessional Conduct– Use of Alcohol and/or Drugs**
24 **To an Extent or In a Manner Dangerous To Self or Others)**

25 16. Respondent is subject to disciplinary action under Code section 2761,
26 subdivision (a), on the grounds of unprofessional conduct, as defined in Code section 2762,
27 subdivision (b), in that Respondent used alcoholic beverages and/or drugs to an extent or in a

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1 manner dangerous or injurious to himself, any other person, or to the public, as set forth in
2 paragraphs 13 and 14 above.

3 **PRAYER**

4 WHEREFORE, Complainant requests that a hearing be held on the matters herein
5 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

- 6 1. Revoking or suspending Registered Nurse License No. RN 582542 issued
7 to Joshua Stephen Yarbrough;
8 2. Ordering Joshua Stephen Yarbrough to pay the Board the reasonable costs
9 of the investigation and enforcement of this case, pursuant to Code section 125.3;
10 3. Taking such other and further action as deemed necessary and proper.

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12 DATED: 5/28/09

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14 
15 RUTH ANN TERRY, M.P.H., R.N.
16 Executive Officer
17 Board of Registered Nursing
18 Department of Consumer Affairs
19 State of California
20 Complainant

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